IMPOSITION OF FINE IN QUO WARRANTO PROCEEDINGS.—Notwithstanding its distinct origin as a criminal proceeding,[1] the information in the nature of *quo warranto,* by reason of its greater practical advantages,[2] quickly superseded the older civil writ of *quo warranto,* assumed the latter's substantial characteristics, and having lost all except the formal traces of its origin, came to be almost universally regarded as a civil proceeding.[3] Accordingly many of the guaranties against injustice which are necessarily incident to all criminal actions are held to have no application to the *quo warranto* information. Thus, the presumption of innocence,[4] the right to a trial by jury,[5] the protection against double jeopardy,[6] the requirement of certainty in the pleadings,[7] and the inability of the State to appeal from an adverse verdict[8] may be denied to the defendant. Therefore, while the recital in the judgment of a nominal fine is still proper as a relic of the ancient form of the information,[9] the imposition of a substantial fine as a criminal punishment would seem in principle unjustifiable.[10] Again, the view that the penalty is exacted as damages for breach of contract[11] is evidently of very limited application, and therefore not broadly characteristic of the writ. For while it might justify a money judgment in proceedings founded upon nonuser or misuser of a franchise privilege, upon the theory of an implied contract not to violate the terms of the grant,[12] it could not be invoked in cases where the judgment is rendered against a defendant who has usurped a franchise or office without color of right,[13] for in this situation the gist of the action is not the breach of a contract, but the want of one.

But it does not follow that the exaction of a fine is repugnant to the nature of a civil proceeding. It is well established that the legislature may, for the suppression of practices contravening the policy of the State, provide penalties which are recoverable in civil suits.[14]

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[1]State *v.* Ashley (1839) 1 Ark. *279, 305.

[2]3 Bl. Comm. 263.

[3]State *v.* Hardie (N. C. 1840) I Ire. L. 42; State *v.* Johnson (1870) 26 Ark. 282; *contra,* Donnelly *v.* People (1850) 11 Ill. 552; *cf.* State *v.* Porter (1840) 1 Ala. 688, 693.

[4]Rex *v.* Leigh (1768) 4 Burr. 2143; State *v.* Harris (1841) 3 Ark. *570; *cf.* State *v.* Haskell (1879) 14 Nev. 209.

[5]Attorney-General *v.* Sullivan (1895) 163 Mass. 446; State v. Johnson *supra;* State *v.* Lupton (1877) 64 Mo. 415; *contra,* Buckman *v.* State (1894) 34 Fla. 48. The division of authority in this country is due to the difficulty of determining whether at common law a jury trial was demandable as of right or merely extended by grace of the court. State *v.* Moores (1898) 56 Neb. 1.

[6]See High, Extraordinary Legal Remedies (3rd ed.) § 746.

[7]5 Thompson, Corporations (2nd ed.) § 5796.

[8]See State *v.* De Gress (1880) 53 Tex. 387.

[9]State Bank *v.* State (Ind. 1823) 1 Blackf. 267.

[10]State *v.* Kearn (1891) 17 R. I. 1; People *v.* Havird (1889) 2 Ida. 531.

[11]See State *v.* Delmar Jockey Club (1906) 200 Mo. 34; State *v.* Standard Oil Co. (1909) 218 Mo. 1, 360.

[12]See State *v.* Delmar Jockey Club *supra.*

[13]Rex *v.* Boyles (1730) 2 Stra. 836.

[14]Waters-Pierce Oil Co. *v.* State (1907) 48 Tex. Civ. App. 162; Stockwell *v.* United States (1871) 13 Wall. 531; State *v.* Grove (1890) 77 Wis. 449; People *v.* Nedrow (1887) 122 Ill. 363; see Burgh *v.* State (1886) 108 Ind. 132.

Such actions are prosecuted to redress wrongs done to the State, and the penalties appear to be imposed as exemplary damages for the public tort.[15] This would seem to be the essential nature of the proceedings and judgment in *quo warranto*, even in the absence of a statutory substitution, which may expressly provide for the assessment of a penalty.[16] Originally, it is true, the fine was imposed as the punishment for a criminal offense. But to insist that it retains that nature is to interpose an objection technical rather than real. It is upon this theory that the prevailing rule, that a money judgment may be imposed in the discretion of the court,[17] seems to be justifiable.

This question is squarely presented in the important case of *Standard Oil Company of Indiana* v. *State of Missouri* (U. S. 1911) 32 Sup. Ct. Rep. 406. In *quo warranto* proceedings against the defendants, for a violation of the Missouri Anti-trust Act, the State court gave judgment ousting the defendants from their franchises and imposing upon each a fine of $50,000. The defendants appealed upon the ground that they had been denied the notice and hearing guaranteed by the due process clause of the Fourteenth Amendment in that the relief granted was not appropriate to the cause of action. This raised the issue whether the power to assess a substantial fine was an inherent characteristic of the *quo warranto* proceeding. The theory of the lower court,[18] that the fine represented damages for breach of the franchise contract, does not establish the proposition that the fine is characteristic of the action, and therefore seems insufficient to overcome the objection of the defendants. The Supreme Court relied rather upon the ground that, especially under the Missouri decisions,[19] the fine was properly exacted as a civil penalty. That requires merely that the fine, although originally a criminal punishment, may be deemed to partake of the changed nature and purposes of the information.

POSSESSION OF A TENANT AS NOTICE OF HIS LANDLORD'S TITLE.—While the authorities are divided on the question as to whether possession of one other than the vendor raises a *prima facie*[1] or conclusive presumption[2] of notice of his interest in the land, they unanimously recognize the principle that such possession is sufficient to put a purchaser on inquiry as to the equities of the actual occupant. And this is equally

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[15]See Davis *v.* State (1889) 119 Ind. 555.

[16]Bownes *v.* Meehan (1883) 45 N. J. L. 189; State *v.* Baker (1875) 38 Wis. 71.

[17]State *v.* Armour Packing Co. (1902) 173 Mo. 356; see People *v.* Miller (1867) 16 Mich. 205; Stewart *v.* Father Matthew Society (1879) 41 Mich. 67; *contra,* State *v.* Kearn *supra.*

[18]State *v.* Standard Oil Co. *supra,* 360.

[19]State *v.* Bernoudy (1865) 36 Mo. 279; State *v.* Lupton *supra;* State *v.* Armour Packing Co. *supra;* State *v.* Delmar Jockey Club *supra.*

[1]Mainwarring *v.* Templeman (1879) 51 Tex. 205; Rankin Mfg. Co. *v.* Bishop (1902) 137 Ala. 271; Staton *v.* Davenport (1886) 95 N. C. 11.

[2]Williamson *v.* Brown (1857) 15 N. Y. 354; Fair *v.* Stevenot (1866) 29 Cal. 486. The same result, however, is usually reached in either case, since the hardship which would otherwise frequently result from the latter view is generally obviated by invoking the principle of estoppel against an occupant who has deceived the purchaser as to the adverse character of his claim. See Barchent *v.* Selleck (1903) 89 Minn. 513.